

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF POLICE COMPLAINTS**

FINDINGS OF FACT AND MERITS DETERMINATION

Complaint No.:	08-0398
Complainant:	COMPLAINANT
Subject Officer(s), Badge No., District:	SUBJECT OFFICER, Third District
Allegation 1:	Harassment
Allegation 2:	Insulting, Demeaning or Humiliating Language or Conduct
Allegation 3:	Use of Excessive or Unnecessary Force
Complaint Examiner:	Arthur D. Sidney
Merits Determination Date:	November 20, 2010

Pursuant to D.C. Official Code § 5-1107(a), the Office of Police Complaints (OPC), formerly the Office of Citizen Complaint Review (OCCR), has the authority to adjudicate citizen complaints against members of the Metropolitan Police Department (MPD) that allege abuse or misuse of police powers by such members, as provided by that section. This complaint was timely filed in the proper form as required by § 5-1107, and the complaint has been referred to this Complaint Examiner to determine the merits of the complaint as provided by § 5-1111(e).

I. SUMMARY OF COMPLAINT ALLEGATIONS

Complainant, COMPLAINANT (Complainant), filed a complaint with the Office of Police Complaints (OPC) on June 13, 2008. COMPLAINANT alleged that on June 8, 2008, the subject officer, Metropolitan Police Department (MPD) SUBJECT OFFICER (Subject Officer), harassed him and his friends when Subject Officer threatened to arrest Complainant for disturbing the peace and ordered him and his friends to leave the area. Complainant also alleged that Subject Officer used unnecessary or excessive force against them when he repeatedly pushed Complainant, shoved his friends, and put his hand on one of his friend's neck. Complainant further alleged that Subject Officer directed language at Complainant and engaged in conduct towards Complainant and his friends that were insulting, demeaning, or humiliating when Subject Officer used profanity towards Complainant and behaved in an aggressive manner towards Complainant and his friends.

II. EVIDENTIARY HEARING

No evidentiary hearing was conducted regarding this complaint because, based on a review of OPC's Report of Investigation, the Complaint Examiner determined that the Report of Investigation presented no genuine issues of material fact in dispute that required a hearing. *See* D.C. Mun. Regs., title 6A, § 2116.3.

III. FINDINGS OF FACT

Based on a review of OPC's Report of Investigation, the objections submitted by Subject Officer on July 30, 2010, and the OPC's response to the objections on August 5, 2010, the Complaint Examiner finds the material facts regarding this complaint to be:

1. On June 8, 2008, Complainant and his friends, Witness #1(Witness #1), Witness #3, and WITNESS #2 (Witness #2), were near the intersection of 18th Street, N.W. and Columbia Road, N.W. at approximately 12:00 a.m. The group observed the Subject Officer interacting with an unidentified couple. After Subject Officer told the couple to disperse, Complainant approached the couple.
2. Complainant provided his contact information to the couple in the event the couple wanted to file a complaint against Subject Officer. Subject Officer approached Complainant and ordered him to leave the area. Complainant complied with Subject Officer's order and proceeded to walk away and hailed a cab. Complainant's friends remained in the area near the intersection.
3. Complainant asked the cab driver to remain in the area while he collected his friends.
4. When Subject Officer saw that Complainant returned to the area, Subject Officer pushed Complainant and turned him around so that he would leave.¹
5. Additional members of the MPD arrived to assist and monitor Complainant and his friends exit from the area.

IV. DISCUSSION

Pursuant to D.C. Official Code § 5-1107(a), "The Office [of Police Complaints] shall have the authority to receive and to ... adjudicate a citizen complaint against a member or members of the MPD ... that alleges abuse or misuse of police powers by such member or

¹ Witness #1 contends that Subject Officer touched him about his shirt to turn him around and pushed him to get him to leave the area. Because Complainant did not make these allegations in his complaint or in his OPC statement the Complaint Examiner will not consider this in his determination.

members, including: (1) harassment; (2) use of unnecessary or excessive force; (3) use of language or conduct that is insulting, demeaning, or humiliating; (4) discriminatory treatment based upon a person's race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, family responsibilities, physical handicap, matriculation, political affiliation, source of income, or place of residence or business; or (5) retaliation against a person for filing a complaint pursuant to [the Act].”

1. Harassment

Complainant alleged that Subject Officer harassed him and his friends when Subject Officer threatened to arrest Complainant and ordered them to leave the area. Complainant contends that he and his friends were not causing a disturbance and that Subject Officer only approached Complainant after he told the couple that he would be a witness in the event the couple wanted to take action against Subject Officer. As discussed further below, the Complaint Examiner finds that Subject Officer harassed Complainant and his friends when he ordered them to leave the area in violation of D.C. Code § 5-1107(a), D.C. Mun. Regs., title 6A, § 2199.1, MPD Special Order 01-01, and MPD General Order 120.21.

Harassment, as defined by MPD Special Order 01-01, Part III, Section G, includes “acts that are intended to bother, annoy, or otherwise interfere with a citizen’s ability to go about lawful business normally, in the absence of a specific law enforcement purpose.”

The regulations governing OPC define harassment as “[w]ords, conduct, gestures or other actions directed at a person that are purposefully, knowingly, or recklessly in violation of the law or internal guidelines of the MPD ... so as to (1) subject the person to arrest, detention, search, seizure, mistreatment, dispossession, assessment, lien, or other infringement of personal or property rights; or (2) deny or impede the person in the exercise or enjoyment of any right, privilege, power or immunity. In determining whether conduct constitutes harassment, [OPC] will look to the totality of the circumstances surrounding the alleged incident, including, where appropriate, whether the officer adhered to applicable orders, policies, procedures, practices, and training of the MPD ... the frequency of the alleged conduct, its severity, and whether it is physically threatening or humiliating.” D.C. Mun. Regs., title 6A, § 2199.1.

The Complaint Examiner finds credible Complainant and Witness #1 and Witness #2’s statements that Subject Officer repeatedly ordered Complainant and his friends to leave the area. ROI at 10-11. Neither Complainant nor his friends were unruly, disruptive, or interfering with a legitimate law enforcement purpose. It is well within a citizen’s right to observe the police, file complaints, and serve as a witness in police misconduct proceedings. Thus, the Complaint Examiner finds that Subject Officer harassed Complainant and his friends when he ordered them to leave the area absent a legitimate law enforcement purpose in violation of D.C. Code § 5-1107(a), D.C. Mun. Regs., title 6A, § 2199.1, MPD Special Order 01-01, and MPD General Order 120.21.

2. Language or Conduct

Complainant alleged that Subject Officer took out his tactical baton and yelled at him to “Keep moving or I’ll kick your ass.” Complainant contends that he was “paralyzed” because of Subject Officer’s aggressive behavior. ROI at 3; Exhibit 2. As discussed further below, the Complaint Examiner finds that Subject Officer did not engage in language or conduct that was insulting, demeaning, or humiliating in violation of D.C. Code § 5-1107(a) and MPD General Order 201.26.

MPD General Order 201.26, Part I, Section C provides that “All members of the department shall be courteous and orderly in their dealings with the public. They shall perform their duties quietly, remaining calm regardless of provocation to do otherwise.”

Only Complainant contended that Subject Officer used profanity. Subject Officer and other members of the MPD that were called to assist that evening all stated that either Subject Officer does not use profanity or they did not recall him using profanity that evening. While Witness #1 and Witness #2 contend that Subject Officer was “aggressive”; the Complaint Examiner finds that the Subject Officer used a firm voice to control the situation and ordered the group to leave the area. The Complaint Examiner does not find that Subject Officer used profane language during his interaction with Complainant and his friends. Moreover, the Complaint Examiner finds that the fact that the Subject Officer ordered the group to disperse, and he did so on several occasions, yet the group did not immediately disperse, further confirms that the Subject Officer was not “aggressive.” Thus, the Complaint Examiner does not find that the Subject Officer engaged in language or conduct that was insulting, demeaning, or humiliating in violation of D.C. Code § 5-1107(a) and MPD General Order 201.26.

3. Unnecessary or Excessive Force

Complainant alleged that when he returned to the scene to get his friends, Subject Officer pushed him in the chest, grabbed him, and turned him around. Complainant contends that he did not seek medical treatment because he did not believe that the bruises were serious enough to go to the emergency room. As discussed below, Complaint Examiner finds that the Subject Officer engaged in unnecessary or excessive force in violation of D.C. Code § 5-1107(a) and MPD General Order 901.07.

Use of unnecessary or excessive force, as defined by MPD Special Order 01-01, Part III, Section N includes “the use of force that is improper in the context of the incident giving rise to the use of force.”

The regulations governing OPC define excessive or unnecessary force as “[u]nreasonable use of power, violence, or pressure under the particular circumstances. Factors to be considered when determining the ‘reasonableness’ of a use of force include the following: (1) the severity of the crime at issue; (2) whether the suspect posed an immediate threat to the safety of officer or others; (3) whether the subject was actively resisting arrest or attempting to evade arrest by

flight; (4) the fact that officers are often required to make split second decisions regarding the use of force in a particular circumstance; (5) whether the officer adhered to the general orders, policies, procedures, practices and training of the MPD ... and (6) the extent to which the officer attempted to use only the minimum level of force necessary to accomplish the objective.” D.C. Mun. Regs., title 6A, § 2199.1.

Complainant and Witness #2 stated that Subject Officer pulled out an asp after he pushed them. In contrast, Witness #1 never mentioned anything about an asp in his statements to OPC. ROI at 7. The Complaint Examiner does not find that Subject Officer used an asp.

The Complaint Examiner does find that Subject Officer used unnecessary or excessive force because he physically pushed Complainant. Subject Officer was not required to any use force. If Subject Officer believed that Complainant and his friends were getting too unruly, he could have arrested them or used other means at his disposal apart from pushing or shoving Complainant. It is immaterial that there were no bruises or that Complainant did not believe that his injuries were serious enough to warrant medical attention. The use of any force under these circumstances was too much.

Complainant stated that he witnessed Subject Officer put his hands on Witness #1’s neck, and also shove Witness #3. The Complaint Examiner finds that given that Subject Officer was pushing Complainant and the other members of the group, it is likely that Subject Officer put his hands on Complainant’s friend’s neck. There is no evidence that Complainant and his friends were disruptive and unruly. Therefore, the force used against the complainant and his friends was too much and was unnecessary. Thus, the Complaint Examiner finds that the Subject Officer engaged in unnecessary or excessive force in violation of D.C. Code § 5-1107(a) and MPD General Order 901.07.

V. SUMMARY OF MERITS DETERMINATION

SUBJECT OFFICER, Third District

Allegation 1: Harassment	Sustained
Allegation 2: Humiliating Language or Conduct	Exonerated
Allegation 3: Use of Excessive or Unnecessary Force	Sustained

Submitted on January 5, 2010.

ARTHUR D. SIDNEY
Complaint Examiner
